

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT**

MDL NO. 2492
Master Docket No. 1:13-cv-09116 (NLH-JS)
The Honorable John Z. Lee

**IN RE: NATIONAL COLLEGIATE ATHLETIC ASSOCIATION STUDENT-
ATHLETE CONCUSSION INJURY LITIGATION**

**PLAINTIFFS' WALKER CLASS REPRESENTATIVES MOTION FOR LEAVE
TO FILE OUT OF TIME FOR ATTORNEY FEES AND EXPENSES**

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TO FILE OUT OF TIME FOR ATTORNEY FEES AND EXPENSES**

Pursuant to the Rules of Court Plaintiffs Chris Walker, Ben Martin and Dan Ahern (collectively, "Walker Representative"), by and through their attorney Timothy J. McIlwain, hereby move for leave to file Plaintiffs' application for attorney fees and expenses out of time. Good cause exists for this motion for leave to file this application out of time for the relief requested. Accordingly, Plaintiffs respectfully ask this Court to issue an order granting leave for Plaintiffs' to file an application for attorney fees and expenses out of time.

On January 13, 2017, a McIlwain, LLC paralegal Carol Crawford was instructed to file Plaintiffs' application, but had a problem logging into the electronic filing system (ECF) on this matter and attempted to get assistance. See Declaration of Carol Crawford and Declaration of Timothy J. McIlwain, Esq. ("McIlwain Decl.") ¶3. When paralegal Crawford attempted to get assistance from Timothy J. McIlwain, Esq. he was unreachable because he was on winery in Montalcino, Italy. ¶4.

When Attorney McIlwain found out about the log in issue it was too late to get the help from the ECF help desk to file my application for an award of attorney fees and expenses in connection with services rendered in this matter. ("McIlwain Cert.") ¶5. Attorney McIlwain is a New Jersey attorney that was filing for the first time in this District Court and contacted the ECF help desk the next business day, which resulted in the filing Plaintiffs' counsel application for fees and expenses on January 17, 2017. ("McIlwain Cert.") ¶6.

Since February 6, 2017 Attorney have been before the Honorable Raymond A. Reddin, J.S.C., in the Superior Court of New Jersey, Law Division for a jury trial on a 2011 employment case, *Gladys Munive v. Passaic County Bd. of SS, PAS-L-3805-11*. (“McIlwain Cert.”) ¶7. The *Gladys Munive v. Passaic County Bd. of SS, PAS-L-3805-11* is expected to conclude March 22, 2017. Therefore, I will be unable to appear personally until after this jury trial finishes. (“McIlwain Cert.”) ¶8.

Attorney McIlwain’s contributions to this settlement are in response to being asked to get involved with this litigation in August of 2013 when Hausfeld, LLP requested that I be added to the pleadings of the *Walker* matter in the United States District Court, Eastern District of Tennessee and prior to Hausfeld, LLP being appointed by the Court as Special Class Counsel for Monitoring Relief. (“McIlwain Cert.”) ¶10. Attorney McIlwain reviewed all documents electronically filed and mailed since the *Walker* Complaint was filed on September 3, 2013. (“McIlwain Cert.”) ¶11. From the beginning Attorney McIlwain was asked to find an adequate class representative for the complaint’s **primary focus on late-life cognitive impairment medical monitoring relief (for Dementia and CTE) on behalf of the older former NCAA football players**. [Emphasis added]. (“McIlwain Cert.”) ¶12.

Attorney McIlwain sought and found a former teammate of his college football coach, Joe Kapp, Plaintiff Bennie Charles Witukiewicz, who played football for the Kent State University “Golden Flashes” from 1964 to 1967. Mr. Witukiewicz played as a tight end. During his college career he experienced repeated traumatic head impacts. Mr. Witukiewicz was diagnosed with Parkinsons Disease on or about September, 2007. Mr. Witukiewicz believes that he suffered

repeated traumatic head impacts over his college career, but due to his current condition cannot recall specific dates. (“McIlwain Cert.”) ¶13. Attorney McIlwain obtained a written retainer from Mr. Witukiewicz and immediately contacted attorney Michael Hausfeld to inquire if they wanted to add a class representative. (“McIlwain Cert.”) ¶14.

From August 30, 2013 to June 1, 2014, Attorney McIlwain employed a medical doctor that worked as a paralegal on this matter. (“McIlwain Cert.”) ¶16. Dr. Kurland has previously worked for Attorney McIlwain as an expert on general medical knowledge on medical malpractice matters such as *Rosa v. Gaetano Buttitta, D.C. et. al., MRS-L-1627-10* and *Estate of Lucy Caplanis v. John Morone, M.D., PAS-L-156-12*. (“McIlwain Cert.”) ¶17. Dr. Kurland’s medical review rate was \$250 per hour, but for purposes of this matter Dr. Kurland is billed at \$150 per hour along with the other paralegals in Attorney McIlwain’s office. (“McIlwain Cert.”) ¶18.

From November 2, 2013 to May 22, 2014, Dr. Kurland reviewed all the medical literature in connection with the concussion law suits and spent approximately 193 hours. However, Attorney McIlwain reduced Dr. Kurland’s time approximately 100 hours for purposes of this application. Attached and made a part hereof is an itemization of Dr. Kurland’s review time as Exhibit C. (“McIlwain Cert.”) ¶19.

After retaining Mr. Witukiewicz I obtained medical records and had my medical doctor paralegal review all of the medical literature referenced in every original complaint and tag along complaint in connection with this class action. Additionally, I drafted, but did not file a complaint on Mr. Witukiewicz’s behalf because of the potential conflict of interests. As opposed to withdrawing from the pleadings and acting as an objector to this settlement Attorney McIlwain

recommended that his client file his own action under the single school/single sport carve out in this settlement. This was accomplished on March 6, 2017.

Through December 31, 2016, the total number of hours spent on this litigation by me and members of my law practice is 150.75. The total lodestar amount for attorney/professional time based on current rates is **\$43,53.25**. Attached and made a part hereof is my plane ticket wherein I flew to Italy on December 31, 2016 and returning February 1, 2017 as Exhibit D. When McIlwain, LLC brings cases on behalf of individual clients on a contingency basis, it charges between 33 1/3% and 40%, plus expenses depending on whether the matter is personal injury, civil rights or complex litigation.

In 2015, I was approved for a billable hourly rate of \$550 per hour in the federal class action matter of *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Northern District of California Case No. 09-cv-1967-CW. Additionally, I have clients sign written retainers on civil rights matters recognizing my hourly rates at \$625 per hour. However, this rate has not been approved by any court to date but is shown below as a usual and customary rates charged for attorney's with twenty (20) years legal experience.

Conclusion

Due to the foregoing, Plaintiffs should be granted leave to file an application for attorney fees and expenses out of time. Granting leave to file will not prejudice any party to this proceeding by delaying the resolution of this case, because this Court has already indicated that final approval of this settlement has postponed in this matter.

Accordingly, Plaintiffs respectfully ask this Court to issue an order granting leave for Plaintiffs' to file an application for attorney fees and expenses out of time.

Respectfully submitted,

By: /s/Timothy J. McIlwain
Timothy J. McIlwain
Attorney for Plaintiffs

Dated: March 17, 2017